PALMEX INDUSTRIES SDN. BHD.

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, PULAU PINANG
WAN ADNAN J
[CRIMINAL APPEAL NO. 51-81-88]
13 FEBRUARY 1989

CRIMINAL LAW: *Offence of permitting employees to work for more than 12 hours - Sections 60C, 99A Employment Act 1955 - Interpretation of ss. 60C, 60A of the same Act - Interpretation of the word "day" under s. 2 of the Act - Whether justified under s. 60A(2)(e) of the Act.*

This was an appeal against the whole of the decision by the appellant who was found guilty in the Magistrate's Court on two charges of permitting two employees to work for more than 12 hours in contravention of s. 60C(2) of the Employment Act 1955 and punishable under s. 99A of the same Act.

The appellant was the employer of Abbas, the complainant in the first charge and Teoh, the complainant in the second charge and both of them were shift workers. The appellant was running a 24-hour continuous operation which was divided into three (3) shifts as follows:

7 a.m. to 3 p.m.;
3 p.m. to 11 p.m. and
11 p.m. to 7 a.m.

Abbas worked for 16 hours between 3 p.m. on 6 April 1986 and 3 p.m. on 7 April 1986 and Teoh worked for 16 hours between 3 p.m. on 28 April 1986 and 3 p.m. on 29 April 1986.

One of the grounds of appeal was that under s. 60C of the Employment Act 1955, the offence was committed not by the employer but by the employees as the prohibition "no employee who is engaged ... shall work more than twelve hours in any one day" is directed against the employee.

Another ground of appeal involved the interpretation of word "day" as applicable to shift workers. Under s. 2 of the Act "day" means:

(a) a continuous period of twenty-four hours beginning at midnight; or

(b) for the purposes of Part XII in respect of an employee engaged in shift work, a continuous period of twenty-four hours beginning at any point of time;.

The appellant contended that the "day" for all the shift workers started at 7 a.m. and therefore Abbas and Teoh had not worked for more than 12 hours in one "day".

The other ground of appeal was that the learned Magistrate did not give effect to s. 60A(2) of the Act. The contention was that Teoh changed his shift to help a friend and that if that request for change was not allowed the employee could just absent himself and that would cause an interruption of work. It was submitted that the appellant was therefore justified under s. 60A(2)(e).

Held:

[1] Section 60C must be read with s. 60A of the Act and reading the two sections together, there is clearly a provision that an employer cannot require an employee to work more than eight hours in one day but if the employee is a shift worker the employer may require him to work more than eight hours in any one day subject to the maximum of twelve hours.

[2] A "day" for a shift worker is a continuous period of twenty-four hours beginning at any point of time. "At any point of time" means the time he starts his work on a particular day. If he starts his work at 7 a.m. on a certain day, a "day" in relation to him will be a continuous period of twenty-four hours from that time. If on another day he starts his work at 11p.m. his "day" will be a continuous period of twenty-four hours from that time. An employer cannot fix the "day" for his shift workers.

[3] Section 60A(2)(e) is meant for a situation where there is an interruption of work which is impossible to foresee. Here, the interruption, if any, was clearly forseeable.

[Appeal dismissed.]

Legislation referred to:
Employment Act 1955, ss. 2, 60A(2), (2)(a), (b), (c), (d), (e), 60C(1), (2), 99A

For the appellant - T.M. Varughese; M/s. T.M. Varughese & Co.
For the respondent - Mohd. Bazain bin Idris, DPP

JUDGMENT

Wan Adnan J:

The appellant was charged in the Magistrate's Court Butterworth for the following:

1st Charge

That you on 6 April 1986 at Palmex Industries Sdn. Bhd. Prai, being the employer of Abbas Bin M.K. Shaik Mohd, NRIC No. 4451759, an employee did permit the said employee to work more than 12 hours on the said date to wit, from 3 p.m. on 6 April 1986 to 3 p.m. on 7 April 1986, in contravention of s. 60C(2) of the Employment Act 1955 and have thereby committed an offence punishable under s. 99A of the same Act thereof.

2nd Charge

That you on 28 April 1986 at Palmex Industries Sdn. Bhd., Prai, being the employer of Teoh Soon Hin, NRIC No. 5035885, an employee, did permit the said employee to work more than 12 hours on the said date to wit, from 3p.m. on 28 April 1986, to 3.00 p.m. on 29 April 1986 in contravention of s. 60C(2) of the Employment Act 1955 and have thereby committed an offence punishable under s. 99A of the same Act thereof.

The appellant was found guilty on both charges and was fined RM300 for each charge. The appellant appeals against the whole of the decision.

The facts of the case are not disputed.

The appellant was the employer of Abbas bin M.K. Shaik Mohd. (Abbas), the complainant in the first charge and Teoh Soon Hin (Teoh) the complainant in the second charge. They were both shift workers. The appellant was running a 24-hour continuous operation which was divided into three (3) shifts as follows:

7 am. to 3 p.m.
3 p.m. to 11 p.m.
11 p.m. to 7 a.m.

On 6 April 1986 Abbas worked from 3 p.m. to 11 p.m. He worked again on 7 April 1986 from 7 a.m. to 3 p.m. Teoh worked from 3 p.m. to 11 p.m. on 28 April 1986 and worked again on 29 April 1986 from 7 a.m. to 3 p.m. Abbas worked for 16 hours between 3 p.m. on 6 April 1986 and 3 p.m. on 7 April 1986 and Teoh worked for 16 hours between 3 p.m. on 28 April 1986 and 3 p.m. on 29 April 1986.

Section 60C of the Employment Act 1955 states as follows:

60C. Shift work

(1) Notwithstanding s. 60A(1)(b) and (d) but subject to sub-section (1)(a) thereof, an employee who is engaged under his contract of service in shift work may be required by his employer to work more than eight hours in any one day or more than forty-eight hours in any one week but the average number of hours worked over any period of three weeks shall not exceed forty-eight per week.

(2) Except in the circumstances described in s. 60A(2)(a), (b), (c), (d), (e), no employee who is engaged under this contract of service in shift work shall work for more than twelve hours in any one day.

One of the grounds of appeal was that under s. 60C of the Act no offence was committed by the employer. It was submitted that it was the employee who committed the offence. The prohibition "no employee who is engaged ... shall work more than twelve hours in any one day" is directed against the employee.

Section 60C must be read with s. 60A of the Act which provides as follows:

60A. Hours of work

(1) Except as hereinafter provided, an employee shall not be required under his contract of service to work:

(a) more than five consecutive hours without a period of leisure of not less than thirty minutes duration;

(b) more than eight hours in one day;

(c) in excess of a spread over period of ten hours in one day;

(d) more than forty-eight hours in one week:

This section stipulates the maximum number of hours an employee can be required to work. Section 60C(1) provides the exception for shift workers. A shift worker may be required by his employer to work more than eight hours in any one day. Sub-section (2) of s. 60C then limits the number of hours to twelve.

Reading the two sections together there is clearly a provision that an employer cannot require an employee to work more than eight hours in one day but if the employee is a shift worker the employer may require him to work more than eight hours in any one day subject to the maximum of twelve hours. Therefore if an employer requires an employee to work for more than twelve hours in any one day he contravenes this provision and he can be punished under s. 99A of the Act which is wide enough to cover this contravention.

The other ground of appeal involves the interpretation of the word "day" as applicable to shift workers.

Under s. 2 of the Act "day" means:

(a) a continuous period of twenty-four hours beginning at midnight; or

(b) for the purposes of Part XII in respect of an employee engaged in shift work, a continuous period of twenty-four hours beginning at any point of time;

The appellant contended that the "day" for all their shift workers started at 7 a.m., the start of the first shift. Even for the shift worker who started work at 3 p.m. his "day" was also from 7 a.m. that day. This had been fixed by the company. Therefore Abbas and Teoh had not worked for more than twelve hours in one "day".

A "day" for a shift worker is a continuous period of twenty-four hours beginning at any point of time. "At any point of time" means the time he starts his work on a particular day. If he starts his work at 7 a.m. on a certain day, a "day" in relation to him will be a continuous period of twenty-four hours from that time. If on another day he starts his work at 11 p.m. his "day" will be a continuous period of twenty-four hours from that time. An employer cannot fix the "day" for his shift workers.

Abbas started work at 3 p.m. on 6 April 1986. The "day" in relation to him was therefore a continuous period of twenty-four hours from 3 p.m. on 6 April 1986. His "day" ended at 3 p.m. on 7 April 1986. During this period he worked for sixteen hours. Teoh's "day" was from 3 p.m. 28 April 1986 to 3 p.m. on 29 April 1986. Teoh also worked for sixteen hours during this period.

The other ground of appeal was that the learned Magistrate did not give effect to s. 60A(2) of the Act.

Section 60C(2) starts with the words "Except in the circumstances described in s. 60A(2)(a), (b), (c), (d), (e) no employee ..."

It was contended (and it was admitted by Teoh) that Teoh worked on 29 April 1986 from 7 a.m. to 3 p.m. because he wanted to help his friend. He changed his shift with a friend. The change was allowed by the appellant because it had no choice. If a request for change was not allowed the employee could just absent himself and that would cause an interruption of work. It was submitted that the appellant was therefore justified under s. 60A(2)(e).

I did not agree to this. Section 60A(2)(e) is not meant for an situation like this. It is meant for a situation where there is an interruption of work which is impossible to foresee. Here, the interruption, if any, was clearly foreseeable.

For the above reasons I dismissed the appeal.

Also found at [1989] 1 CLJ 1097